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8 UNITED STATES DISTRICT COURT FOR THE
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 NEW YORK LIFE INSURANCE
12 COMPANY,

13 Plaintiff,

14 v.

15 BRANDON GUNWALL; JEFFREY E.
16 SWENSON; and AMELIA BESOLA,
17 as Administratrix of the Estate of
18 Mark Lester Besola.

19 Defendants,

Civil Action No. 2: 19-cv-00226

DEFENDANT, AMELIA BESOLA'S
MOTION TO STAY PROCEEDINGS

20
21 I. Request

- 22 1. Amelia Besola, Defendant, hereinafter "Ms. Besola," through her attorney of
23 record, Desmond Kolke, respectfully requests this Court to Stay these
24 proceedings pending the outcome of litigation in regards to the Estate of Mark
25 Besola that is pending in Pierce County Superior Court that will have a significant
26 impact on the parties and this proceeding before the U.S. District Court of
27 Western Washington.
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II. Relevant Procedural History

1. In this matter before the U.S. District Court of Western Washington, Ms. Besola has asked the Court to find that Brandon Gunwall and Jeffrey Swenson are disqualified as beneficiaries to the New York Life Insurance Policy proceeds, by virtue of meeting the definition of “abuser” or “slayer” of the Insured, Mark Besola, under R.C.W. 11.84.010.
2. On September 16, 2019, Mr. Gunwall, through his attorney of record, Daniel Walk, filed a Petition to Admit a Will in the probate of the Estate of Mark Besola that is pending in Pierce County Superior Court under cause # 19-4-00616-6 that would remove Ms. Besola as the administratrix of the Estate of Mark Besola.
3. On September 26, 2019, the Pierce County Superior Court admitted the will dated December 6, 2018 and named Eric Pula the Personal Representative, (Administrator), of the Estate of Mark Besola. (See Attached Exhibit A)
4. In response to Pierce County Superior Court admitting the will dated December 6, 2019 and appointing Eric Pula as Personal Representative, Ms. Besola immediately filed a Petition to Contest the Will Dated December 6, 2019. (See Exhibit B).
5. Ms. Besola now comes before this Court requesting a Stay of these proceedings until the issue as to the identity of the personal representative of the Estate of Mark Besola is resolved in the pending will contest in Pierce County Superior Court.

III. ISSUE & ARGUMENT

1. Should the Court Briefly Stay These Proceedings Pending the Outcome of the Will Contest in Pierce County Superior Court?

This matter should be stayed for the primary reason that the pending will contest in Pierce County Superior Court will determine the identity of the parties in the matter before this court. The result of the will contest in Pierce County Superior Court will determine if Ms. Besola remains as one of the parties in this matter, and therefore it is sensible that this matter should be stayed until it is established who will be the personal representative of the Estate of Mark Besola.

This court has the authority to stay a case pending the outcome of another court's decision. The United States Supreme Court recognized the inherent power of district courts "to stay proceedings in one suit until the decision of another" in furtherance of the fair and efficient administration of justice. (*Landis v. N. Am.Co.* (1936) 299 U.S. 248, 249, 254.) Justice Cardozo explained "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants." (*Id.* at 254.) The Supreme Court delineated two basic requirements for the grant of a discretionary stay. First, a party that seeks such a stay "must make a clear case of hardship or inequity in being required to go forward." (*Id.*) Second, such a stay must have time limit that is reasonable under the circumstances. (*Id.* at 257.) The high Court made it clear however, there is nothing per se impermissible about staying a lawsuit until the outcome of another related action has been determined. (*Id.* at 258.)

IV. CONCLUSION & REQUEST

DATED THIS 27th DAY OF September, 2019.

Is/ Desmond Kolke
Desmond Kolke, WSBA # 23563
Attorney for Ms. Amelia Besola

Exhibit A
Page 1 of 3

19-4-00016-6 53892381 ORWFRSA 08-26-19

FILED
IN COUNTY CLERK'S OFFICE

SEP 26 2019

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the estate of:

MARK LESTER BESOLA,

Deceased.

NO. 19-4-00016-6

ORDER: 1) ADMITTING WILL TO PROBATE;
2) REVOKING LETTERS OF ADMINISTRATION;
3) GRANTING LETTERS TESTAMENTARY OR
LETTERS OF ADMINISTRATION WITH WILL
ANNEXED.~~[PROPOSED]~~

THIS MATTER having come on regularly for hearing before the above entitled Court on the Petition of Brandon Gunwall requesting various relief and with the Court expressly finding as follows:

1. The Decedent died while a resident of Pierce County, Washington, on January 1, 2019, leaving property in that County and State subject to probate.

2. The Last Will and Testament of the above-named Decedent, executed on December 6, 2018, is the Last Will and Testament of the Decedent and should be admitted to probate herein.

3. The Last Will and Testament of the above-named Decedent specifically states that Amelia Besola shall not serve as the executor of his estate under any circumstances.

4. The Last Will and Testament of the above-named Decedent nominates Eric Pula to serve as the Personal Representative of his estate. In the event that Eric Pula is unable or unwilling

ORDER ON PETITION TO ADMIT WILL,
REVOKE LETTERS, AND ISSUE LETTERS

-1-

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McGOLDRICK
ATTORNEYS AT LAW820 "A" Street, Suite 600
P.O. Box 1533
Tacoma, Washington 98401
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Fax: (253) 272-4338

to serve, Kelly McGraw is named as the alternate Personal Representatives under the Last and Testament of the above-named Decedent. Either party is to serve without bond and with nonintervention powers.

WHEREFORE, having found the above, it is now therefore:

ORDERED, ADJUDGED AND DECREED that the Last Will and Testament of the Decedent dated December 6, 2018, be and the same is hereby admitted to probate as the Last Will and Testament of the Decedent.

It is further ORDERED, ADJUDGED AND DECREED that the Letters of Administration issued to Amelia Besola on January 7, 2019 be and are hereby REVOKED pursuant to RCW

11.28.150. **AND THAT SHE SHALL NOT DISPOSE OF, OR OTHERWISE TRANSFER, ANY ESTATE ASSETS EFFECTIVE IMMEDIATELY.**

It is further ORDERED, ADJUDGED AND DECREED that the Clerk of the Court is directed to issue Letters Testamentary/~~Letters of Administration with Will Annexed~~ to

ERIC RALA upon filing their oath, to serve without bond and with nonintervention powers.

It is further ORDERED, ADJUDGED AND DECREED that Amelia Besola, having served as the Administrator of the Estate of Mark Besola from January 7, 2019 to present, shall, within ten (10) days of the ~~issuance of this Order~~,

APPOINTMENT OF THE SUCCESSOR EXECUTOR, financial information, and any and all other records of any kind belonging or relating to the Estate

of Mark Besola, to the new Personal Representative or Administrator with Will Annexed appointed herein. *** AMELIA BESOLA MAY PETITION THE COURT FOR MORE TIME IF SHE DETERMINES THAT TO BE NECESSARY.**

It is further ORDERED, ADJUDGED AND DECREED that Amelia Besola, having served as the Administrator of the Estate of Mark Besola from January 7, 2019 to present, shall, within twenty-one (21) days of the ~~issuance of this Order~~,

APPOINTMENT OF THE SUCCESSOR EXECUTOR

ORDER ON PETITION TO ADMIT WILL,
REVOKE LETTERS, AND ISSUE LETTERS

-1-



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9/27/2019

1 appraisalment in accordance with RCW 11.44.015 as well as a report pursuant to RCW 11.76.010
2 to the new Personal Representative or Administrator with Will Annexed appointed herein.

3 It is further ORDERED, ADJUDGED AND DECREED that

4 _____

5 _____

6 _____

7 _____

8 _____

9
10 DONE IN OPEN COURT this 26 day of September, 2019.

11
12 Cynthia McDonald
13 JUDGE/COURT COMMISSIONER
PRO TEM

14 PRESENTED BY:

15 Daniel K. Walk
16 Daniel K. Walk, WSBA No. 52017
17 Of Morton McGoldrick, PLLC
Attorneys for Petitioner

FILED
IN COUNTY CLERK'S OFFICE

SEP 26 2019

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

18
19 APPROVED AS TO FORM:

20 Desmond Kolke
21 X

22 DESMOND KOLKE, WSBA #23563

23

ORDER ON PETITION TO ADMIT WILL,
REVOKE LETTERS, AND ISSUE LETTERS

-1-



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9/27/2019

Exhibit B

Page 1 of 4

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

September 26 2019 2:15 PM

KEVIN STOCK
COUNTY CLERK
NO: 19-4-00016-6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

In the Matter of the Estate Of:

MARK LESTER BESOLA,
Deceased.

PROBATE NO. 19-4-00016-6

PETITION OPPOSING THE PROBATE OF
THE PURPORTED WILL DATED
DECEMBER 6, 2018

Contestant, AMELIA M. BESOLA, opposes the probate of the instrument filed in this court purporting to be the last will of MARK LESTER BESOLA, deceased, and for ground of opposition alleges:

1. On January 1, 2019, the date of the Decedent's death, Mark Lester Besola was a resident of Lake Tapps, Pierce County, Washington, leaving property in this state subject to probate.

2. Amelia M. Besola, the contestant, is a sister of the decedent and as such heir is interested in the will and estate of the decedent on the ground of being entitled to share in the distribution of the decedent's estate.

Exhibit B
Page 2 of 4

1 3. On September 16, 2019, a motion was made to have a hearing on September 6, 2019 to
2 admit an instrument purporting to be the last will and testament of Mark Lester Besola, deceased,
3 dated December 6, 2018.

4 4. The decedent was not at the time of the execution of the instrument competent to make
5 a will. For over the past four to five years prior to the date of the decedent's execution of the
6 purported will, the decedent had been so addicted to the excessive use of intoxicating liquors and
7 drugs that the decedent's reason had been permanently impaired, and the decedent was not of
8 sound and disposing mind and memory.

9 5. On information and belief, the purported will of the decedent was not properly attested
10 and executed as a will. The named witnesses that alleged to have been in the presence of the
11 decedent at the time of the execution of the purported will are family members of the named
12 personal representative of the person named as executor of the purported will.

13 6. The purported will was made twenty-six (26) days prior to the decedent's death on
14 January 1, 2019.

15 At the time of the making and execution of the decedent's purported will the decedent was
16 in ill health, which in combination with the decedent's addiction and excessive use of intoxicating
17 liquors and drugs, his mental faculties were considerably impaired. The decedent's physical and
18 mental health had deteriorated rapidly over six months immediately preceding the time of the
19 alleged making and execution of the decedent's purported will through to his death 26 days later.

20 In the time period leading up to the time of the alleged making and execution of the
21 decedent's purported will and continuing through to after the death of the decedent, the decedent
22 relied heavily on Brandon Gunwall, Eric Pula, and Kelly McGraw to assist and handle most, if not
23

Exhibit B

Page 3 of 4

1 virtually all, of the decedent's affairs including matters relating to personal maintenance, grocery
2 shopping, and the like, and financial matters.

3 During this period, the decedent's physical and mental health continued to decline and in
4 combination with the decedent's addiction and excessive use of intoxicating liquors, and drugs,
5 Brandon Gunwall, Eric Pula, and Kelly McGraw had almost unfettered control and influence over
6 the decedent's mind, decisions and actions. This reached a point the last couple months of the
7 decedent's life where the decedent did whatever Brandon Gunwall, Eric Pula, and Kelly McGraw
8 advised to told him to do, which included the making and execution of the purported will of the
9 decedent on December 6, 2018.
10

11 In essentially dictating the terms and provisions of the purported will, Brandon Gunwall,
12 Eric Pula, and Kelly McGraw took advantage of the decedent's extreme trust and confidence in,
13 and dependence on Brandon Gunwall, Eric Pula, and Kelly McGraw, and, by so doing, was able
14 to and did substitute their will and desires for that of the decedent. This is exemplified by the
15 provisions in the will that benefitted Brandon Gunwall, Eric Pula, and Kelly McGraw at the
16 expense of the decedent's heirs and previously named beneficiaries. At the time of the making
17 and execution of the purported will dated December 6, 2018, the decedent was therefore not acting
18 of his own free will, but was simply responding completely to the dictates and influence of
19 Brandon Gunwall, Eric Pula, and Kelly McGraw. As a direct result, the purported will of the
20 decedent wa not the free and voluntary act of the decedent, but was procured by the undue
21 influence of Brandon Gunwall, Eric Pula, and Kelly McGraw.
22

23 7. Based on information and belief Brandon Gunwall and/or Eric Pula are disqualified as
24 the beneficiary to the Policy, by virtue of meeting the definition of "abuser" or "slayer" of the
25 Insured under R.C.W. 11.84.010. Under R.C.W. 11.84.040, a slayer or abuser is deemed to have
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Exhibit

Page 7 of 7

predeceased the decedent as to property that would have passed to the slayer or abuser and that pursuant to R.C.W. 11.84.100 (1), such property is payable to the Estate. R.C.W. 11.84.100.

WHEREFORE, the Contestant, Amelia Besola, prays that:

- A. The Court enter a Temporary Order restricting the disbursement and distribution of any assets of the decedent's estate without approval of the court.
- B. The Court make and cause to be entered a formal Order that the purported will dated December 6, 2018 be denied probate on the basis that the decedent did not have the competency; was not properly executed; was created under restraint or undue influence or fraudulent representation; or for any other cause affecting the validity of the purported will or any part thereof.
- C. The Contestant be awarded costs including attorney's fees; and
- D. The Contestant be awarded such other and further relief as the court deems just and proper.

Signed at Tacoma, WA, this _____ day of September 26, 2019.



Desmond Kolke, WSBA # 23563
Attorney for Amelia M. Besola, Contestant